

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

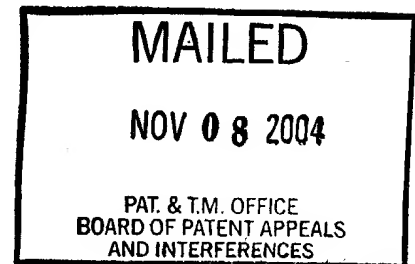
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES ALAN HEDRINGTON and BRENT WILLIAM DRESSEL

Appeal No. 2004-1759
Application No. 09/655,166

ON BRIEF



Before GARRIS, WARREN, and DELMENDO, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 22 and 23 which are all of the claims pending in the application.

The subject matter on appeal relates to a method for cooking a pizza. With reference to the appellants' drawing, the method comprises the steps of placing a pizza 2 on a rotatable food support member 70 wherein the pizza is positioned over the axis of rotation of the food support member, and rotating the pizza multiple times through a heating chamber defined by an upper housing 50 and a lower housing 20, the upper and lower housings

extending over and under respectively only a portion of a food support member such that heating members 56, 24 in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza.

This appealed subject matter is adequately represented by independent claim 22 which reads as follows:

22. A method for cooking a pizza comprising the steps of:

placing a pizza on a generally circular, rotatable food support member having a central axis of rotation wherein the food support member is adapted to be disposed in a substantially horizontal orientation and the pizza is positioned over the axis of rotation of the food support member; and

rotating the pizza contained on the food support member multiple times through a heating chamber defined by upper and lower housings, the upper and lower housings extending over and under respectively only a portion of the food support member such that heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza.

The references relied upon by the examiner as evidence of obviousness are:

Sinks	1,054,321	Feb. 25, 1913
Lang et al. (Lang)	5,039,535	Aug. 13, 1991

Claims 22 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sinks in view of Lang. In the paragraph

bridging pages 7 and 8 of the answer, the examiner expresses his obviousness conclusion in the following manner:

In conclusion, the only difference between the Sinks and appellants' claims is the centering of a pizza on the axis of rotation. Sinks alone does not teach this due to the presence of the spindle (Figure 1, #4). However, the secondary reference of Lang et al[.] teach a method of cooking pizza by centering it on the axis of rotation and cooking it by intermittent heat (Figures 6-7, #60). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the pizza cooking of Lang et al[.] into the invention of Sinks since both are directed to methods of cooking, since Sinks already included a rotatable food support (Figure 1, #8) as well as intermittent heating of the food (page 1, lines 73-76), since the gear drive of Lang et al[.] (Figure 6, #78 & 80) would have eliminated the need for the complicated central shaft and two-piece food support of Sinks (Figure 2, #4 & 8), since the gear drive of Lang et al[.] would have prevented the possibility of the operator being burnt by manually turning the food support, since pizza was a popular food item which was commonly cooked on a rotatable food support as shown by Lang et al[.] (abstract), and since Lang et al[.] also included intermittently passing a portion of the pizza by a heating member (Figures 6-7, #60).

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by the appellants and by the examiner concerning the above noted rejection.

OPINION

For the reasons which follow, the rejection before us cannot be sustained.

The examiner's conclusion of obviousness is inappropriate for at least two reasons.

First, the aforequoted modification of Sinks proposed by the examiner would render patentee's invention unsatisfactory for its intended purpose. See In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). This is because Sinks teaches that, in operation of his manually rotated grill, "articles placed upon the grill by the operator are readily turned into close proximity to the heating means and may be readily brought out again for inspection and for turning on the grill" (page 1, lines 73-77) whereby "the operator . . . is enabled to vary the application of heat as desired" (page 1, lines 24-27). This operation and the advantages thereof would not be possible with the motorized gear drive by which Lang rotates his cooking surface (e.g., see the paragraph bridging columns 6 and 7). It follows that an artisan would not have been motivated to provide Sinks with Lang's motorized gear drive feature as proposed by the examiner since this provision would render Sinks incapable of operating in the manner contemplated by patentee.

Second, even if the teachings of Sinks and Lang were combined, the resulting combination would not correspond to the method defined by appealed independent claim 22: This claim

requires that "heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber to cook the pizza." As properly argued by the appellants, neither Sinks nor Lang contains any teaching or suggestion of this claim requirement. In dismissing the appellants' argument that the applied references do not teach this claim requirement, the examiner presents the following rebuttal on page 4 of the answer:

However, Sinks clearly teaches intermittent heating by rotating food into a heating chamber, rotating the food out of the chamber for inspection and turning, then rotating the food back into the chamber (page 1, lines 73-76). Furthermore, Lang et al[.] clearly teach a heater (Figures 6-7, #60) which applies heat to only the portion of the rotating pizza adjacent to it.

The examiner's above quoted rebuttal suggests to us that he has not paid adequate attention to the specific requirement defined by the independent claim on appeal. Contrary to the examiner's apparent belief, this requirement is not satisfied by moving an entire food article into and out of the heating chamber as in Sinks' method or by Lang's method wherein the pizza edge portion (as well as the top and bottom portions) are heated as the entire pizza is rotatably disposed within the heating chamber. Instead, independent claim 22 requires that "heating members in the housings [i.e., the upper and lower housings which

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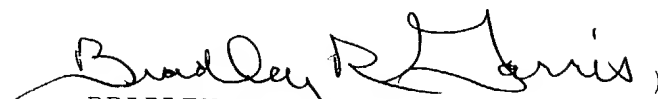
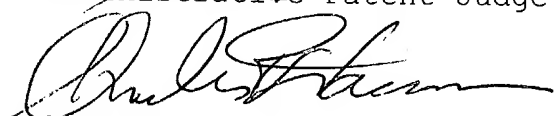
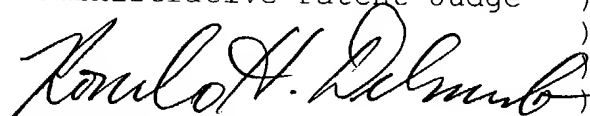
extend over and under respectively only a portion of the food support member] apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber [which is defined by the upper and lower housings] to cook the pizza."

For the above stated reasons, the examiner has failed to carry his initial burden of establishing a prima facie case of obviousness within the meaning of 35 U.S.C. § 103. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). We cannot sustain, therefore, the examiner's Section 103 rejection of claims 22 and 23 as being unpatentable over Sinks in view of Lang.

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The decision of the examiner is reversed.

REVERSED


BRADLEY R. GARRIS
Administrative Patent Judge)

CHARLES F. WARREN
Administrative Patent Judge)

ROMULO H. DELMENDO
Administrative Patent Judge)

BOARD OF PATENT
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BRG:hh

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